

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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PETALS DECORATIVE ACCENTS LLC,	:	
	:	
Plaintiff,	:	<u>AMENDED REPLY TO</u>
	:	<u>COUNTERCLAIMS</u>
-against-	:	
	:	
THE ELEVATION GROUP LLC, CONTROL	:	Index No. 07CV8120(HB)
SOLUTIONS INC., IMAGESOFT INC., TONY	:	
YENIDJEIAN and DINESH BAKHRU,	:	
	:	
Defendants.	:	
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Plaintiff, PETALS DECORATIVE ACCENTS LLC, (hereinafter “Petals” or “Plaintiff”) by its attorneys, Gersten Savage, LLP, as and for its Amended Reply to Counterclaims asserted by Defendants ImageSoft, Inc. and Dinesh Bakhru, allege as follows:

**AS AND FOR A FIRST COUNTER CLAIM AS AGAINST PLAINTIFF
BREACH OF CONTRACT**

1. Denies the allegations contained in paragraph 57 except admits that the Plaintiff and ImageSoft entered into an agreement whereby ImageSoft was to provide IT services, including but not limited to software design and implementation, to Petals.
2. Denies the allegations contained in paragraph 58 except admits that the Plaintiff and ImageSoft entered into an agreement whereby ImageSoft was – in part – to provide Petals with the expertise of certain skilled individuals.
3. Admits the allegations contained in paragraph 59.
4. Denies the allegations contained in paragraph 60.
5. Denies the allegations contained in paragraph 61.

6. Denies the allegations contained in paragraph 62.
7. Denies the allegations contained in paragraph 63.
8. Denies the allegations contained in paragraph 64.
9. Denies the allegations contained in paragraph 65.
10. Denies the allegations contained in paragraph 66.
11. Denies the allegations contained in paragraph 67.
12. Denies the allegations contained in paragraph 68 except admits that ImageSoft seeks judgment against Petals.

AS AND FOR A SECOND COUNTER CLAIM AS AGAINST PLAINTIFF

ACCOUNT STATED

13. Denies the allegations contained in paragraph 70.
14. Denies the allegations contained in paragraph 71.
15. Denies the allegations contained in paragraph 72 except admits that Imagesoft rendered invoices to the Plaintiff.
16. Denies the allegations contained in paragraph 73.
17. Denies the allegations contained in paragraph 74.
18. Denies the allegations contained in paragraph 75 except admits that ImageSoft seeks judgment against Petals.

**AS AND FOR A THIRD COUNTER CLAIM AS AGAINST PLAINTIFF
UNJUST ENRICHMENT**

19. Denies the allegations contained in paragraph 77.
20. Denies the allegations contained in paragraph 78.
21. Denies the allegations contained in paragraph 79.
22. Denies the allegations contained in paragraph 80.
23. Denies the allegations contained in paragraph 81.
24. Denies the allegations contained in paragraph 82 except admits that ImageSoft seeks judgment against Petals.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

25. ImageSoft's counter-claims are barred by the doctrines of laches, unclean hands, estoppel and waiver.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

26. ImageSoft's counter-claims fail to state a claim upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

27. ImageSoft's counter-claims are barred by the statute of frauds.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

28. ImageSoft's counter-claims are barred due to a lack of consideration.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

29. ImageSoft's counter-claims are barred by reason of ImageSoft's material breach of contract.

WHEREFORE, plaintiff, Petals Decorative Accents LLC, demands judgment in its favor and against the defendant/counter-claimant, ImageSoft Inc., dismissing the counter-claims in their entirety with prejudice and awarding attorneys' fees and costs as well as such other and further relief as this Court deems equitable and just.

Dated: November 21, 2007

GERSTEN SAVAGE, LLP
Attorneys for Plaintiff

By: 

David Lackowitz (DL 8591)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of November, 2007, a true and correct copy of the foregoing Amended Reply to Counterclaims was served electronically upon the Court and the following counsel:

Paul G. McCusker, Esq.
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Dated: November 21, 2007